55.W-215 Gr 1211

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of	Examiner: J. Wilson
GRAHAM KELLY	
	Group Art Unit: 1211
Application No. 08/338,567	
Filed: January 12, 1996	
For: HEALTH SUPPLEMENTS CONTAINING PHYTO-OESTROGENS, ANALOGUES OR METABOLITES THEREOF	

Petition for Extension of Time Under 37 CFR §1.136(a)

The undersigned attorney hereby petitions for an extension of time of one (1) month beyond the time period set in the Official Action, dated 4/30/96, in the above-referenced patent application. A check in the amount of $55.00 is enclosed.

May 31, 1996
Date

Patrick J. Hagan
Patrick J. Hagan
Attorney for Applicant

Certificate of Mailing Under 37 CFR §1.8(a)

I hereby certify that this correspondence is being deposited on May 31, 1996 with the United States Postal Service as first class mail in an envelope addressed to COMMISSIONER OF PATENTS AND TRADEMARKS, Washington, D.C. 20231.

Date of Certificate

Patrick J. Hagan
Patrick J. Hagan
Attorney for Applicant
PTO Reg. No. 27,643

TRAVERSAL AND REQUEST FOR RECONSIDERATION OF REQUIREMENT FOR RESTRICTION

Applicant, through his undersigned attorneys, hereby traverses and requests reconsideration of the requirement for restriction set forth in the Official Action dated April 30, 1996 in the above-identified patent application. A shortened statutory period of thirty (30) days was specified in the April 30, 1996 Official Action. The initial due date for response, therefore, way May 30, 1996. A petition for a one (1) month extension of the response period is presented herewith.

The restriction requirement in this case is

manifestly improper for failure to comply with 37 C.F.R. §1.475 and relevant provisions of the Manual of Patent Examining Procedure (MPEP).

The present application was filed under 35 U.S.C. §371 as a U.S. national stage application under the Patent Cooperation Treaty.

As stated in §1895.01(4) of the MPEP:

> Restriction practice in both international and national stage applications is determined under unity of invention principles as set forth in 37 C.F.R. 1.475 and 1.499. Restriction practice under 35 U.S.C. 121, as it applies to national applications submitted under 35 U.S.C. 111(a), is not applicable to either international or national stage applications.

According to 37 C.F.R. 1.475(b):

> An international or national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: . . .
>
> (2) a product and a process of use of said product; . . . .

The claims of the present application are drawn to two such categories of invention.

Because it is clear that the April 30, 1996 Official Action fails to comply with the appropriate U.S. Patent and Trademark Office rules in setting forth the restriction requirement, it is respectfully submitted that the requirement should be reconsidered and withdrawn.

Respectfully submitted,

DANN, DORFMAN, HERRELL AND SKILLMAN
A Professional Corporation

By Patrick J. Hagan

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